

STATE OF MICHIGAN
COURT OF APPEALS

In re LEWIS, Minors.

UNPUBLISHED

June 11, 2015

No. 324979

Saginaw Circuit Court

Family Division

LC No. 13-033789-NA

Before: RIORDAN, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to JDL, JL, and AL pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and MCL 712A.19b(3)(j) (reasonable likelihood of harm). The court also terminated her parental rights to JDL pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication). We affirm.

The sole issue on appeal is whether the trial court erred in finding that termination of respondent's parental rights was in the children's best interests.¹ We review such finding for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76,

¹ Respondent does not challenge the statutory grounds for termination; therefore, we may assume that the trial court did not clearly err in finding that those grounds were established by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1999), overruled in part on other grounds *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). Nevertheless, we have reviewed the record and the statutory grounds for termination and concluded that the trial court did not clearly err.

90; 836 NW2d 182 (2013). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted). The trial court may also consider a respondent’s unfavorable psychological evaluation, the respondent’s continued involvement in domestic violence, the respondent’s history, and the age of the children. *In re Jones*, 286 Mich App at 131. Moreover, “because ‘a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a),’ the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child’s best interests.” *In re Olive/Metts Minors*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). See also MCL 712A.19a(6)(a).²

Here, the evidence showed that respondent has a bond with the children. It also shows that they are placed with their legal father, a fact that the trial court expressly considered during its best-interest analysis.³ The trial court’s best-interest finding was not clearly erroneous in light of the children’s need for permanency and respondent’s inability to provide as much, given her failure to comply with and benefit from services. The children’s father testified that he intended that the children would be returned to respondent’s care once she had completed her treatment. But respondent never completed her treatment. Instead, she failed to complete or benefit from numerous services. She was discharged without completion from psychological services, Spectrum, the CASA parenting program, Odyssey House-Saginaw, and Odyssey House-Flint. Her failure to complete some of the services was predicated on her use of illegal substances, which continued through March 2014, despite significant involvement by petitioner. Testimony in the record reveals that respondent was occasionally high during parenting time visits. Also, respondent was informed by the trial court, on June 3, 2014, that termination would be delayed in order to give respondent time to benefit from her treatment at Odyssey House-Flint. We find particularly troubling that, approximately 20 days later, respondent voluntarily left Odyssey

² We note that a father is not a “relative” for purposes of this analysis. MCL 712A.13a(1)(j) provides the statutory definition of “relative”—as it applies in the context of MCL 712A.19a(6)(a)—as:

an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child.

Thus, the children’s placement with their father was not a “relative placement” under the statute.

³ As discussed, the children’s placement with their father was not a “relative placement” under the statute. Nevertheless, we find no error requiring reversal in the trial court’s analysis.

House-Flint, against medical advice, because of disagreements with other residents at the facility. Caseworkers testified that respondent was only a short time away from receiving unsupervised parenting time—a fact of which she was aware—at the time she left the facility. She then ceased communicating with petitioner for approximately two weeks. And, although she eventually attended Odyssey House-Saginaw, respondent was terminated from the program because of her behavior and her failure to follow rules. Given respondent's failure to participate in or benefit from available services, she was unable to provide permanency and stability for the children.

With regard to substance abuse, respondent argues that she maintained sobriety for approximately 8 months; she argues that the trial court failed to give adequate consideration to this fact in its best-interest analysis. While the record reveals respondent did not have any positive drug screens after March 2014, it also reveals that respondent failed to comply with drug screens from July 21, 2014 until September 1, 2014, and again after September 1, 2014. Further, respondent attended only 16 out of 47 sessions in an out-patient program with which she was supposed to comply after leaving Odyssey House-Flint. Under the circumstances, if respondent retained her legal rights, the children's situation would remain unstable.

As respondent notes, the trial court did not terminate her parental rights with respect to another child, RW, who was living with his father. RW's father is not the father of JDL, JL, and AL. A trial court must decide the best interests of each child individually, *In re Olive/Metts Minors*, 297 Mich App at 42, and here the trial court concluded that the situation with RW was different from the situation with JDL, JL, and AL. The facts showed that RW was older, had a different father, and lived further away. These are all differences that supported treating the situations differently. Further, it is significant that RW's father actively sought full legal and physical custody of RW. In contrast, there is no indication in the record that the father of JDL, JL, and AL initiated any separate legal proceedings to gain sole legal and physical custody of them. Indeed, he repeatedly testified throughout the case that if respondent completed her treatment, he supported the children being returned to her care.

Moreover, the record shows that there is a history of domestic violence between the father of JDL, JL, and AL and respondent. The evidence showed that respondent became upset during an argument with the children's father and pursued him from her apartment, leaving her children unattended in the process. She assaulted him with a knife and was arrested for felonious assault and domestic violence, pleading guilty to domestic violence. Further, the testimony shows that she did not successfully complete counseling or anger management classes.

Accordingly, on this record the trial court did not err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Jane M. Beckering